

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket No. HSA-A 05/06-046
)	
Marina Community Partners, LLC		Voluntary Cleanup Agreement
100 12 th Street, Building 2862		
Suite 100		
Marina, California 93933)	
Project Proponent)	Health and Safety Code
Thom Gamble)	Section 25355.5(a)(1)(C)
Marina Community Partners, LLC)	
Suite 100, Building 2862)	
Marina, California 93933)	
Attn: Simon Whitmey, Project Director)		
_____)	

I. INTRODUCTION

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) enters into this Voluntary Cleanup Agreement (Agreement) with Mr. Thom Gamble, representing Marina Community Partners (Proponent).

1.2 Site. The Site (also known as the Property), which is the subject of this Agreement is located on the former Fort Ord, Monterey County, California. The Property is approximately 350 acres. The Property is identified as Army Parcels: L12.2.1, L5.4.1, L5.4.2, L5.4.3, L5.5.1, L5.5.2, E17, L12.2.3, L12.2.2, L12.3 , E2b.1.1.1, E2b.1.1.2, E2b.1.3, E2b.1.4, E2b.1.5, E2b.2.1, E2b.2.3, E2b.2.4, E2b.3.1.1, E2b.3.2, E2c.1, E2c.3.3 E2d.1,

E2d.2, , E2d.3.1, and E2d.1. A location map and site diagram is attached as Exhibit A and Exhibit B.

1.3 Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code (H&SC) section 25355.5(a) (1) (C). This section authorizes DTSC to enter into an enforceable agreement with Proponents to oversee the characterization and cleanup of a Site.

1.4 Purpose. The purpose of this Agreement is for the Proponent to prepare a Preliminary Endangerment Assessment (PEA) for the evaluation of lead in soils at a portion of former Fort Ord known as the Main Garrison area under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from the Proponent for DTSC's oversight costs.

II. BACKGROUND

2.1 Ownership. The Property is owned by the United States Army, Fort Ord Reuse Authority, and the City of Marina Redevelopment Agency.

2.2 Substances Found at the Site. There is a potential that lead-based paint flakes fell off the buildings located on the property and are now in adjacent soils. No sampling for lead in soils surrounding structures containing lead-based paint has been undertaken by any party.

2.3 Physical Description. The Property consists of approximately 350 acres in total area, on a portion of the former Fort Ord Army Base, known as Main Garrison. The Site has approximately 900 structures that were constructed or rehabilitated prior to 1978 and are presumed to contain lead-base paint.

2.4 Site History. The Property is located on a portion of the former Fort Ord Army Base known as the Main Garrison. The Army historically used the property for barracks, administrative, maintenance and recreational activities. The Property

consists of various pre-1978 buildings that are presumed to contain lead-based paint. The United States Environmental Protection Agency, (U.S. EPA), DTSC and the California Regional Water Quality Control Board have overseen all remediation work performed by the Army. In addition, except for the possibility of lead-based paint in soil, the Property has been found suitable for redevelopment pursuant to its Finding of Suitability for Transfer (FOST). DTSC is working with the Project Proponent via this Agreement to address the potential of lead based paint releases to soils. Parcels L5.4.1, L5.4.2, L5.4.3, L5.5.1, L5.5.2, E17, E2d.1, E2b.1.1.1, E2b.1.1.2, E2d.1.3, E2b1.4, E2b.1.5, E2b.2.1, E2b.2.3, E2b.2.4, E2b.3.1.1, E2b.3.2, E2c.1, E2c.3.3E2d.2, L12.3 have been transferred by the Army to the Fort Ord Reuse Authority (FORA), who in turn transferred the Property to the City of Marina Redevelopment Agency (Agency) for development in accordance with the Fort Ord Reuse Plan. Proponent is in the process of implementing a redevelopment plan under an agreement with FORA and will eventually own these parcels. Project Proponent will also address lead-base paint issues for Parcel L12.2.1, currently owned by the Army to be transferred to Imjin Partners; Parcels L12.2.3 and L12.2.2 currently owned by FORA to be transferred to Injim Partners; and Parcel E2D.3.1, currently owned by the Army to be transferred to Project Proponent. DTSC has determined that aside from lead based paint contamination that may exist in connection with existing structures as described in this Agreement, and groundwater contamination subject to use restrictions, the other constituents of concern identified by the Army have been remediated or are being remediated (groundwater) in compliance with applicable California law. Accordingly, this Agreement is focused on the last known remaining constituent of concern on the Site-lead in soils originating from lead based paints used on base structures.

III. AGREEMENT

3.0 IT IS HEREBY AGREED THAT DTSC will provide review and oversight of the response activities conducted by the Proponent in accordance with the Scope of Work contained in Exhibit C. The Proponent shall conduct the activities in the manner specified herein and in accordance with the schedule specified in Exhibit E. All work shall be performed consistent with H&SC section 25300 et seq., as amended; the National Contingency Plan (40 Code of Federal Regulations (CFR) Part 300), as amended; the U.S. EPA and DTSC Superfund guidance documents regarding site investigation and remediation.

3.1 Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC's completion of activities described above shall constitute DTSC's complete performance under this Agreement.

3.2 Additional Activities. Additional activities may be conducted and DTSC oversight provided by amendment to this Agreement or Exhibits hereto in accordance with Paragraph 3.17. If DTSC expects additional oversight costs to be incurred related to these additional activities, it will provide an estimate of the additional oversight cost to the Proponent.

3.3 Agreement Managers. Mr. Anthony J. Landis, P.E., Chief, Northern California Office of Military Facilities, is designated by DTSC as its Manager for this Agreement. Mr. Simon Whitmey, Project Director for Marina Community Partners is the project manager for this agreement. Each Party to this Agreement shall provide at least ten (10) days advance written notice to the other of any change in its designated manager.

3.4 Notices and Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication such as certified mail, overnight

delivery service, facsimile transmission or courier hand delivery service:

3.4.1 To DTSC:

Mr. Anthony J. Landis, P.E., Chief
Northern California-Office of Military Facilities
Attn: Ms. Theresa McGarry, Hazardous Substances Scientist
Site Mitigation and Brownfields Reuse Program
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

3.4.2 To the Proponent:

Mr. Thom Gamble
Marina Community Partners
Attn: Mr. Simon Whitmey
Suite 100, Building 2862
Marina, California 93933

3.5 DTSC Review and Approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) Return comments to the Proponent with recommended changes; or (b) Modify the document as deemed necessary and approve the document as modified.

3.6 Communications. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to the Proponent in writing by DTSC's Agreement Manager or his/her designee. No informal advice, guidance, or suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve the Proponent of the obligation to obtain such written approvals.

3.7 Endangerment during Implementation. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, DTSC may order the Proponent to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment.

3.8 Payment. The Proponent agrees to pay (1) all costs incurred by DTSC in association with preparation of this Agreement and for review of documents submitted prior to the effective date of the Agreement, and (2) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents described in Exhibit C and associated documents, and in providing oversight of field activities. An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC will bill the Proponent quarterly. Proponent agrees to make payment within sixty (60) days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by the Proponent.

3.8.1 In anticipation of services to be rendered, Proponent shall make an advance payment of \$9,948 to DTSC. That payment shall be made no later than ten (10) days after this Agreement is fully executed. If the Proponent's advance payment does not cover all costs payable to DTSC under this paragraph, Proponent agrees to pay the additional costs within sixty (60) days of receipt of a bill from DTSC.

3.8.2 If any bill is not paid by the Proponent within sixty (60) days after it is sent by DTSC, the Proponent may be deemed to be in material default of this Agreement.

3.8.3 All payments made by the Proponent pursuant to this Agreement shall be by a cashier's or certified check made payable to the "Department of Toxic Substances Control," and bearing on its face the project code for the site (**Site Code: 201615 (11WP)**) and the docket number of this Agreement. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 "I" Street, 21st Floor
Post Office Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Agreement Manager/Regional Branch Chief.

3.8.4 If the advance payment exceeds DTSC's actual oversight costs, DTSC will provide an accounting for expenses and refund the difference within one hundred-twenty (120) days after termination of this Agreement in accordance with Paragraph 3.18. In no other case shall the Proponent be entitled to a refund from DTSC or to assert a claim against DTSC for any amount paid or expended under this Agreement.

3.9 Condition Precedent. It is expressly understood and agreed that DTSC's receipt of the advance payment described in Paragraph 3.8.1. is a condition precedent to DTSC's obligation to provide oversight, review and/or comment on documents.

3.10 Record Retention. DTSC shall retain all cost records associated with the work performed under this Agreement for such time periods as may be required by applicable state law. The Proponent may request to inspect all documents which support DTSC's cost determination in accordance with the Public Records Act, Government Code section 6250 et seq.

3.11 Project Coordinator. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. The Proponent shall submit: a) the name and address of the project coordinator; and b) in order to demonstrate expertise in hazardous substance site cleanup, the resume of the coordinator. The Proponent shall promptly notify DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

3.12 Access. Proponent shall provide, and/or obtain access to the Site and off site areas to which access is necessary to implement this Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of the Proponent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by the Proponent.

3.13 Sampling, Data and Document Availability. When requested by DTSC, the Proponent shall make available to DTSC, and shall provide copies of, all data and information concerning contamination at the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement.

3.14 Notification of Field Activities. The Proponent shall inform DTSC at least seven (7) days in advance of all field activities pursuant to this Agreement and shall allow DTSC or their authorized representatives to take duplicates of any samples collected by the Proponent pursuant to this Agreement.

3.15 Notification of Environmental Condition. The Proponent shall notify DTSC's Agreement Manager immediately upon learning of any condition posing an immediate threat to public health or safety or the environment. Within seven (7) days of the onset of such a condition, the Proponent shall furnish a report to DTSC, signed by the Proponent's Agreement Manager, setting forth the events which occurred and the measures taken in the response thereto.

3.16 Preservation of Documentation. The Proponent shall maintain a central repository of the data, reports, and other documents prepared pursuant to this Agreement. All such data, reports and other documents shall be preserved by the Proponent for a minimum of six (6) years after the conclusion of all activities carried out under this

Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, the Proponent shall comply with that request, deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. The Proponent shall notify DTSC in writing at least ninety (90) days prior to the expiration of the six-year minimum retention period before destroying any documents prepared pursuant to this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the six year period, the related records shall be retained until the completion and resolution of all issues arising there from or until the end of the six-year period, which ever is later.

3.17 Amendments. This Agreement may be amended or modified solely upon written consent of all parties. Such amendments or modifications may be proposed by any party and shall be effective the third business day following the day the last party signing the amendment or modification sends its notification of signing to the other party. The parties may agree to a different effective date.

3.18 Termination for Convenience. Except as otherwise provided in this Paragraph, each party to this Agreement reserves the right unilaterally to terminate this Agreement for any reason. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Agreement to the other Party. In the event that this Agreement is terminated under this Paragraph, the Proponent shall be responsible for DTSC costs through the effective date of termination.

3.19 Exhibits. All exhibits attached to this Agreement are incorporated herein by this reference.

3.20 Time Periods. Unless otherwise specified, time periods begin from the date this Agreement is fully executed, and "days" means calendar days. "Business days" mean all calendar days that are not weekends or official State holidays.

3.21 Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a satisfaction or release from liability for any condition or claim arising as a result of Proponent's past, current, or future operations. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims

arising out of or relating to the deposit or disposal at any other location of substances removed from the Site.

3.22 Government Liabilities. The State of California (State) shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by the Proponent or its agents in carrying out the activities pursuant to this Agreement.

3.23 Third Party Actions. In the event that the Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Proponent shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

3.24 Reservation of Rights. DTSC and the Proponent reserve the following rights:

3.24.1 DTSC reserves its right to pursue cost recovery under the Comprehensive Environmental Response, Compensation and Liability act of 1980 (CERCLA), as amended, the California H&SC section 25360, and any other applicable section of the law.

3.24.2 Nothing in this Agreement is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law or equity to protect public health and safety or the environment and recovering the costs thereof.

3.24.3 Nothing in this Agreement shall constitute or be construed as a waiver of the Proponent's rights, (including any covenant not to sue or release) with respect to any claim, cause of action, or demand in law or equity that the Proponent may have against any "person", as defined in Section 101(21) of CERCLA, or H&SC section 25319, that is not a signatory to this Agreement.

3.24.4 By entering into this Agreement, Proponent does not admit to any fact, fault or liability under any statute or regulation.

3.25 Compliance with Applicable Laws. Nothing in this Agreement shall relieve the Proponent from complying with all applicable laws and regulations, and the Proponent shall conform all actions required by this Agreement with all applicable federal, state and local laws and regulations.

3.26 California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

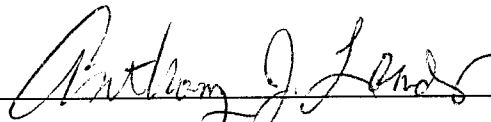
3.27 Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.


3.28 Parties Bound. This Agreement applies to and is binding, jointly and severally, upon each signatory and its officers, directors, agents, receivers, trustees, heirs, executors, administrators, successors, and assigns, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. No change in the ownership or corporate or business status of any signatory, or of the facility or Site shall alter any signatory's responsibilities under this Agreement.

3.29 Effective Date. The effective date of this Agreement is the date when this Agreement is fully executed.

3.30 Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

3.31 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

 Date: 9-23-05
Anthony J. Landis, P.E., Chief
Northern California-Office of Military Facilities
Department of Toxic Substances Control

 Date: 9-14-05
Mr. Thom Gamble
Marina Community Partners

EXHIBITS

A - SITE LOCATION MAP

B – SITE DIAGRAM

C - SCOPE OF WORK

D - COST ESTIMATE

E - SCHEDULE

EXHIBIT A
SITE LOCATION MAP

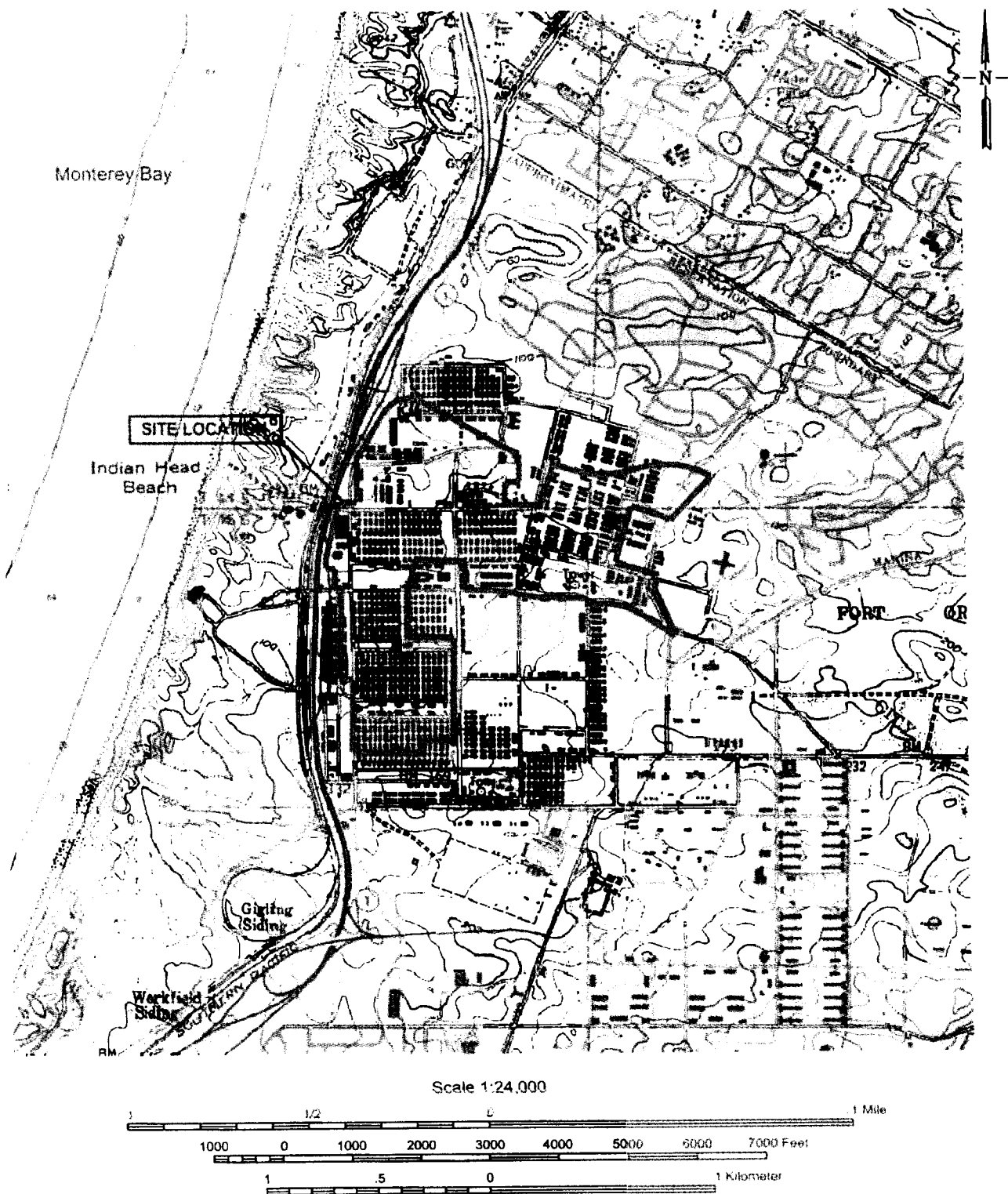


FIGURE 1
Site Location Map

Source: National Geographic USGS TOPO! 2000

northgate
environmental management, inc.

West and North University Villages
Fort Ord Site
Marina, California
August 2005
Project No. 1148.01.A

EXHIBIT B
SITE DIAGRAM

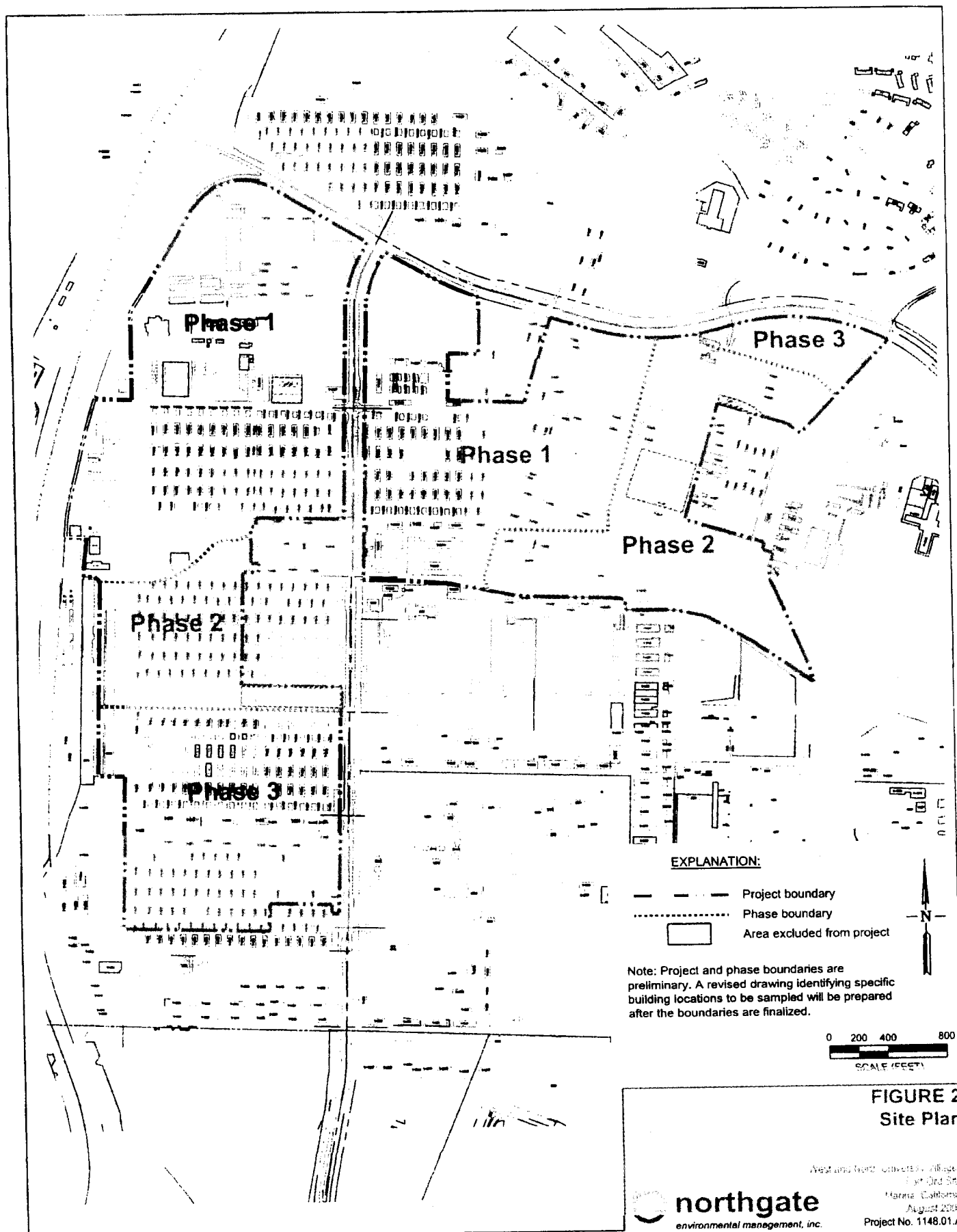


EXHIBIT C

SCOPE OF WORK

The following Tasks will be completed as part of this Agreement:

TASK 1. Submittal of Existing Data. The Proponent will submit to DTSC all background information, sample analysis results, environmental assessment reports, and any other information pertinent to the lead-based paint soil management and/or release, characterization and cleanup of the Site. DTSC will review the information, identify areas and media of concern, and determine the additional work, if any, required to complete the investigation/remediation of lead on the Site.

TASK 2. Preliminary Endangerment Assessment (PEA). Proponent shall conduct a PEA to determine whether a release or threatened release of lead to soils from lead-based paint on structures exists at the Site which poses a threat to human health or the environment. The PEA shall be conducted in accordance with the DTSC guidance manual, as determined by DTSC, for evaluating hazardous substance release sites, titled: "Preliminary Endangerment Assessment Guidance Manual," State of California, Environmental Protection Agency, Department of Toxic Substances Control (January 1994). Documents which may be required as part of the PEA are:

- (a) PEA Work Plan. This work plan shall include a sampling plan designed to determine the type and general extent of lead contamination at the Site; a health and safety plan addressing health and safety issues and safe work practices; and a quality assurance/quality control (QA/QC) plan to produce data of known quality.
- (b) PEA Report. This report will document whether a release of lead has occurred or threatened release exists, the threat the Site poses to human health and the environment, and whether further action is necessary.

TASK 3. Public Participation. 3.1 Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest. Proponent shall work cooperatively with DTSC to ensure that the adjoining property owners and other affected and interested public and community are informed of the PEA for the Site. Any such public participation activities shall be conducted in accordance with the DTSC Public Participation Policy and Procedures Manual, and with DTSC's review and approval.

TASK 4. QA/QC Plan. All sampling and analysis conducted by the Proponent under this Agreement shall be performed in accordance with a QA/QC Plan submitted by the Proponent and approved by DTSC. The QA/QC Plan will describe:

- (a) The procedures for the collection, identification, preservation and transport of samples;
- (b) The calibration and maintenance of instruments;
- (c) the processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to H&SC section 25198; and
- (d) How the data obtained pursuant to this Agreement will be managed and preserved in accordance with the Preservation of Documentation section of this Agreement.

TASK 5. Health and Safety Plan. The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192 and DTSC guidance, which covers all measures, including contingency plans, which will be taken during field activities to protect the health and safety of the workers at the Site and the general public from exposure to hazardous waste, substances or materials. The Health and Safety Plan should describe the specific personnel, procedures and equipment to be utilized.

EXHIBIT D
COST ESTIMATE

Department of Toxic Substances Control EXHIBIT D

COST ESTIMATE: UNIVERSITY VILLAGE PARCEL, FORMER FORT ORD Project

*Includes Direct and Indirect Cost Rates **

TITLE	Project Manager	Legal	Toxicology	Geology	HQ CEQA	Industrial Hygiene	Public Participation	Supervisor	Tech. Sr.	Clerical
CLASSIFICATION	HSS/HSE	Staff Counsel	Staff Toxicologist	HSEG	AEP	AIH	PPS	SHSE/ SHSS	SHSE/ SHSS	WPT
TASKS										
Site File Review , Agreement Negotiation/Preparation	8							1		2
Preliminary Environmental Assessment (PEA) for lead-based paint releases	20							1	16	
										0
Site Visits, meetings, correspondence	16								16	2
										0
Public Participation										
RAP/RAW										
CEQA										
Total Hours/Class	44		0	0	0	0	0	2	32	4
Total Hours	82									
Hourly Rate/Class	\$117	\$152	\$149	\$122	\$127	\$129	\$103	\$134	\$134	\$61
Total Cost/Class	\$5,148	\$0	\$0	\$0	\$0	\$0	\$0	\$268	\$4,288	\$244

Total Estimated Costs	\$9,948
Past Costs	
Grand Total Costs	\$9,948

* Indirect rate used for calculations = 182.52%

8/29/2005

EXHIBIT E
SCHEDULE

TASK

SCHEDULE

Draft PEA workplan

Within 60 days of signing the
VCA

Draft Community Profile

Within 60 days of signing VCA

Draft reviews and comments on work plan

Within 45 days of receipt of
submittal

Work plan implemented

Within 60 days of approving the
work plan

PEA submitted

Within 90 days of sampling
activity

DTSC reviews and provides comments

Within 30 days of PEA submittal

Final PEA submitted

Within 30 days of DTSC
comments

Department of Toxic Substances Control EXHIBIT D

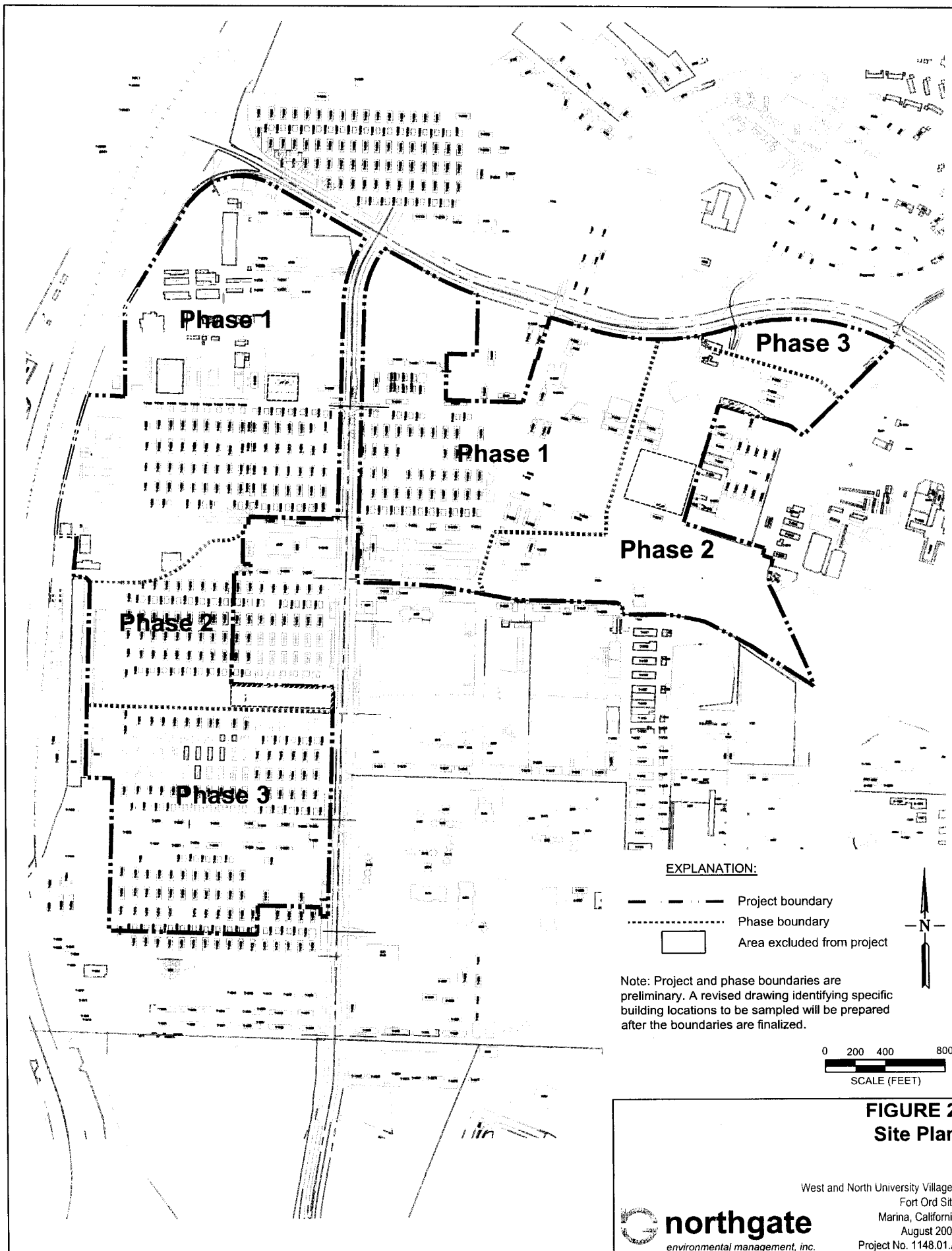
COST ESTIMATE: UNIVERSITY VILLAGE PARCEL, FORMER FORT ORD Project

*Includes Direct and Indirect Cost Rates **

	Project				HQ	Industrial	Public			
TITLE	Manager	Legal	Toxicology	Geology	CEQA	Hygiene	Participation	Supervisor	Tech. Sr.	Clerical
CLASSIFICATION	HSS/HSE	Staff Counsel	Staff Toxicologist	HSEG	AEP	AIH	PPS	SHSE/SHSS	SHSE/SHSS	WPT
TASKS										
Site File Review , Agreement Negotiation/Preparation	8							1		2
Preliminary Environmental Assessment (PEA) for lead-based paint releases	20							1	16	
										0
Site Visits, meetings, correspondence	16								16	2
										0
Public Participation										
RAP/RAW										
CEQA										
Total Hours/Class	44		0	0	0	0	0	2	32	4
Total Hours	82									
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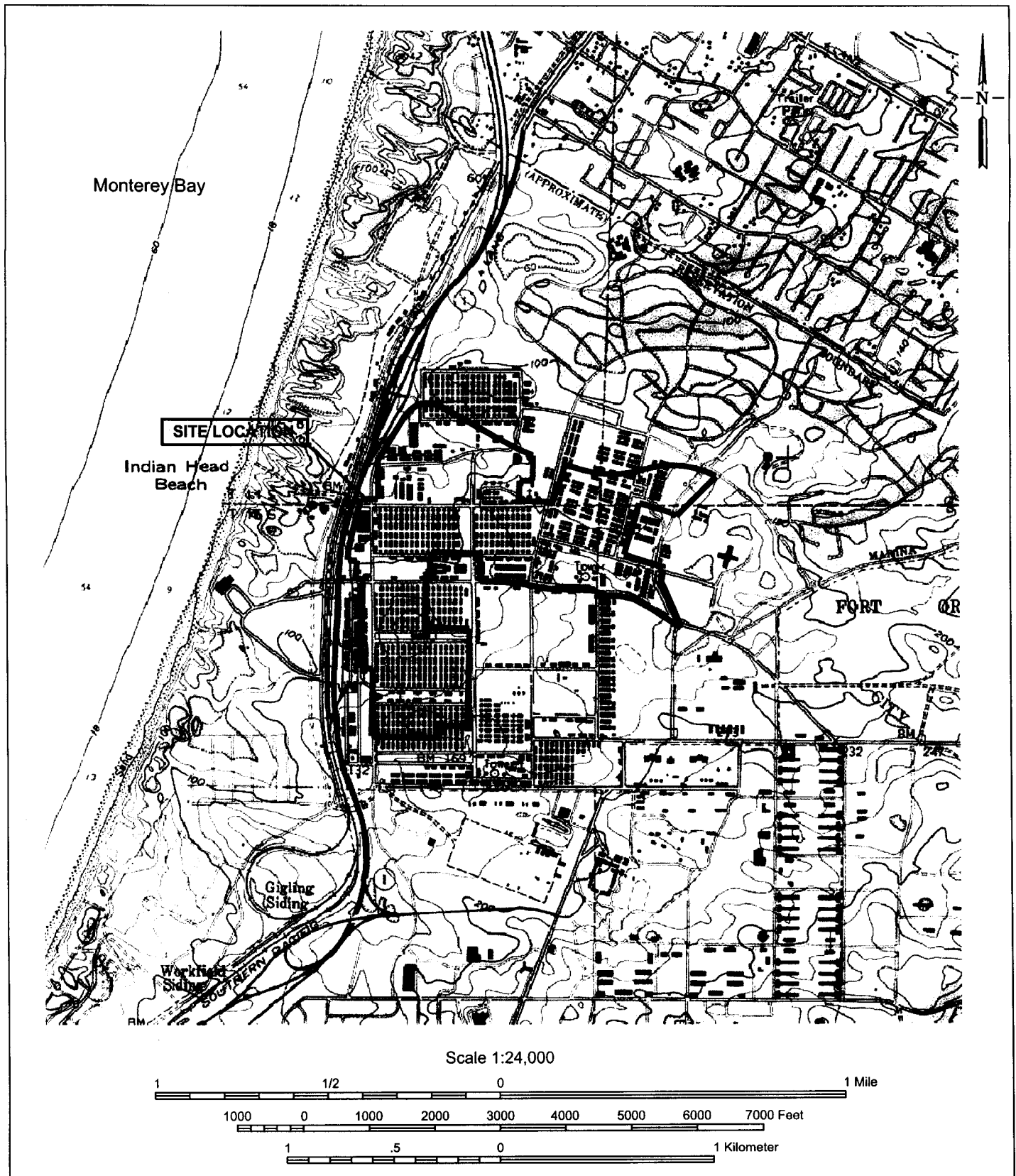


FIGURE 1
Site Location Map

Source: National Geographic USGS TOPO! 2000

northgate
environmental management, inc.

West and North University Villages
Fort Ord Site
Marina, California
August 2005
Project No. 1148.01.A